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In the Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-21

T. R. GRUBBS, d b a T. R. GRUBBS TIRE & APPLIANCE,
Petitioner,

vs.

GENERAL ELECTRIC CREDIT CORPORATION,
Respondent.

PETITIONER'S REPLY BRIEF TO ARGUMENTS RAISED IN THE BRIEF OF RESPONDENT

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TO THE HONORABLE SUPREME COURT OF THE UNITED STATES:

PETITIONER respectfully submits this reply to the Respondent's brief herein, in order to reply to arguments first raised by Respondent in its said brief, and for such shows:

I.

There is one statement contained in Respondent's brief which is completely untrue and must be refuted. That is Respondent's contention on pages 2 and 6 that the conflicting decision of this Court (*Schmidt & Story* v. *Bank of Commerce*, 234 U.S. 64, 34 S. Ct. 730, 58 L. Ed. 1214)

was not called to the attention of the Court of Appeals. The applicability of this case was strenuously argued and pointed out to the Court of Appeals. It was first cited in Petitioner's letter to the Court of October 5, 1972 which was written to respond to questions raised by the Court in oral argument. In addition, said decision and the conflict were again called to the attention of the Court and argued in Petitioner's Motion for Rehearing which was filed on April 26, 1973 and denied on May 14, 1973. The pertinent quotes from said documents are:

Letter of October 5, 1972

"2. The fact that Mr. Grubbs may have had a liability at some time on the charged back accounts does not change the fact that the $66,000.00 note was a new agreement, based upon a new consideration. When that consideration failed, the entire note was unenforceable. The Supreme Court of the United States has overruled almost the exact point Appellant urges in relation to this point. In *Schmidt & Story* v. *Bank of Commerce*, 58 L.Ed. 1214, Mr. Justice Hughes said:

"It was said that, even assuming the notes in suit to have been given as the result of a willful misrepresentation, the *defendants, being bound by the former notes were held to no greater duty than previously rested upon them*, and hence could not defend upon the ground that they were induced to sign the notes by fraudulent representations.

. . .

"We are unable to agree with this conclusion. The question was not one of a recovery of damages in deceit. . . If there was fraud, it vitiated the transaction, and the plaintiff could not avail itself of its own wrong by enforcing the notes. *The facts that the three*

defendants . . . were liable on the former notes, did not place them under any legal obligation whatever to make the notes in suit.

. . .

"The new notes constituted *new promises with distinct legal consequences.* It is clear that the plaintiff could not enforce them if they were fraudulently induced."

"The *Schmidt & Story* case involved fraudulent representations. We have findings of *both* fraudulent representations inducing the execution of the note, *and* total failure of consideration. We feel that this case, as well as multitudes of others on failure of consideration, effectively answers the contention that G.E.C.C. should have recovered judgment for all or part of the note."

MOTION FOR REHEARING

"I. The Court erred in holding that the agreements which the trial Court held were consideration for the execution of the 1964 note did not obligate G.E.C.C. to do anything more than, or different from, what it was already obligated to do and therefore that G.E.C.C. should recover on said note, because said holding is in direct conflict with the decision of the United States Supreme Court in the case of *Schmidt & Story* v. *Bank of Commerce,* 58 L.Ed. 1214."

II.

Respondent contends on page 4 of its brief that this case is not reviewable because it remanded portions of the case to the Trial Court for further proceedings. We must remind Respondent, however, that there has been no remand of the Court of Appeals rulings which Petitioner

complains of here. The holding that G.E.C.C. may recover on the note is not a remand for further proceedings. Neither is the Court of Appeals holding that Petitioner cannot recover for the tortious acts of G.E.C.C.'s field men. Both these holdings, which Petitioner seeks to have reviewed, are final renditions of the Court of Appeals and are proper subjects for review by this Court.

III.

Respondent says the Court of Appeals cited a Texas Supreme Court case in support of its conclusion that there was no proof of agency. Petitioner submits that the case so cited is not in point, and the Court of Appeals refused to follow numerous decisions, which were in point, rendered by the Supreme Court of Texas and even this Honorable Court, all of which were to the effect that there was sufficient proof of agency. Such a departure from the accepted course of judicial procedure warrants the supervision of this Honorable Court.

WHEREFORE, Petitioner respectfully prays that a writ of certiorari issue to review the judgment of the Court of Appeals.

Respectfully submitted,

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